

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 97-0220 ITC**  
**Gross Income Tax — Interstate Commerce Exemption**  
**For Tax Periods: 1993 through 1995**

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**ISSUES**

**I. Gross Income Tax — Interstate Commerce Exemption**

**Authority:** IC 6-2.1-3-3;  
45 IAC 1-1-119 (1978)

Taxpayer protests the inclusion of certain sales in its Indiana gross income.

**STATEMENT OF FACTS**

Taxpayer is engaged in the business of marketing grain. These commodities are purchased from local farmers and then resold, and shipped, to buyers located throughout the United States. The majority of sales are shipped by rail in railcars belonging either to the rail carrier, or to the buyers. Audit included in taxpayer's Indiana gross income all receipts from sales of grain shipped out-of-state in railcars owned by nonresident buyers.

**I. Gross Income Tax — Interstate Commerce Exemption**

**DISCUSSION**

Taxpayer believes income received from some of its grain sales – sales in which the grain was shipped out-of-state in railcars owned by nonresident buyers – should not have been included in its Indiana gross income. Taxpayer's protest rests with the statutory exemption afforded to income derived from interstate business transactions.

As IC 6-2.1-3-3 provides:

Gross income derived from business conducted in commerce between the state of Indiana and either another state or a foreign country is exempt from gross income

tax to the extent the state of Indiana is prohibited from taxing that gross income by the United States Constitution.

Audit determined, however, that these transactions represented taxable outshipments. In support of its position, Audit cites 45 IAC 1-1-119(2)(c), which describes one type of *taxable outshipment*:

Sales to nonresidents where the buyer picks up the goods within the State but does not inspect them until after transport to an out-of-state destination.

Audit reasons that since nonresident buyers control *the use* of their railcars – i.e., determined where the railcars were to be taken, when the railcars were to arrive for pickup, and where the grain would be delivered – the nonresident buyers have, in fact, "picked up the goods within the State."

Taxpayer counters by noting that such distinctions are irrelevant. A determination of railcar ownership does not transform an exempt interstate grain transaction – i.e., a nontaxable outshipment – into a taxable one.

45 IAC 1-1-119(1)(f) illustrates one type of *nontaxable* transaction:

Sales to nonresidents, where the goods are picked up in Indiana by common carrier which was ordered to do so by the buyer, and delivered to an out-of-state destination.

Nothing presented suggests to the Department that taxpayer's nonresident buyers have "picked up" goods in Indiana. These transactions are not analogous to those of a nonresident buyer who drives into Indiana to accept delivery of purchased goods. While taxpayer may own one or more of the railcars, such ownership does not elevate taxpayer to "rail carrier" status. Additionally, ownership of the railcars, alone, does not affect the *rail carrier's* "common carrier" status.

The Department finds the transactions involving grain sales to nonresident buyers – transactions in which the grain is delivered to an out-of-state location in railcars owned by nonresident buyers – represent nontaxable outshipments. As such, the receipts should be excluded from taxpayer's Indiana gross income pursuant to IC 6-2.1-3-3.

### **FINDING**

Taxpayer's protest is sustained.